

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

LYNN MCALLISTER,	:	
	:	
Plaintiff	:	CIVIL ACTION NO. 3:22-882
	:	
v.	:	(JUDGE MANNION)
	:	
REVOLUTIONARY HOME	:	
HEALTH, INC., <i>et al.</i>,	:	
	:	
	:	
Defendants	:	
	:	

ORDER

Pending before the court is the report of Magistrate Judge Karoline Mehalchick which recommends that the defendants' motion to dismiss the plaintiff's amended complaint be granted in part and denied in part. (Doc. 13). Neither party has filed objections to Judge Mehalchick's report.

Where no objection is made to a report and recommendation, the court should, as a matter of good practice, satisfy itself that there is no clear error on the face of the record in order to accept the recommendation. Fed. R. Civ. P. 72(b), advisory committee notes; *see also Univac Dental Co. v. Dentsply Intern., Inc.*, 702 F.Supp.2d 465, 469 (M.D.Pa. 2010) (citing *Henderson v. Carlson*, 812 F.2d 874, 878 (3d Cir. 1987) (explaining judges should give some review to every report and recommendation)). Nevertheless, whether

timely objections are made or not, the district court may accept, not accept, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. 28 U.S.C. '636(b)(1); Local Rule 72.31.

The plaintiff brought the instant action alleging both failure to accommodate and retaliation claims pursuant to the Americans with Disabilities Act (“ADA”) and the Pennsylvania Human Relations Act (“PHRA”), as well as a claim pursuant to the Emergency Family and Medical Leave Expansion Act (“EFMLEA”), after being denied a request to work from home in early 2020 because of her asthma, her daughters’ asthma, and her daughters’ increased susceptibility to COVID-19.

In considering the defendants’ motion to dismiss, Judge Mehalchick has set forth the applicable standards under which the plaintiff’s allegations are to be evaluated. As to each of the claims brought on her own behalf, Judge Mehalchick has determined that the plaintiff’s complaint is sufficient to survive the defendants’ motion to dismiss. However, to the extent the plaintiff attempts to bring claims based upon her children’s alleged disabilities, Judge Mehalchick has determined that such claims are not cognizable under the law. Upon review, the court finds no clear error of record. Moreover, the court agrees with the sound reasoning which led

Judge Mehalchick to her conclusions. As such, the court will adopt Judge Mehalchick's report and recommendation as the decision of the court.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

(1) The report and recommendation of Judge Mehalchick (**Doc. 13**) is

ADOPTED IN ITS ENTIRETY AS THE DECISION OF THE COURT.

(2) The defendants' motion to dismiss the plaintiff's amended complaint (**Doc. 10**) is **GRANTED IN PART AND DENIED IN PART**. To the extent the plaintiff sets forth claims related to her children's disabilities under the ADA and PHRA, the defendants' motion to dismiss is **GRANTED** and those claims are **DISMISSED WITH PREJUDICE**. In all other respects, the defendants' motion to dismiss is **DENIED**.

(3) The instant action is **REMANDED** to Judge Mehalchick for all further pre-trial matters.

s/ Malachy E. Mannion
MALACHY E. MANNION
United States District Judge

DATE: July 11, 2023

22-882-01